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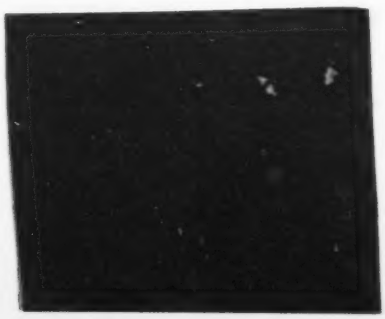
USE AND APPLICATION OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE

Development of United Nations minimum rules for the administration of criminal justice

Report of the Secretary-General

Summary

The present report has been prepared in response to Commission on Crime Prevention and Criminal Justice decision 5/101. It contains information received from States regarding the advisability and specific content of the draft minimum rules for the administration of criminal justice. It summarizes the views of Member States regarding (a) the utility of formulating draft minimum rules for the administration of criminal justice, (b) the utility of convening an expert group to review the draft minimum rules and (c) specific areas in which an expert group could consider making changes to the draft minimum rules.



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INTRODUCTION

1. The Commission on Crime Prevention and Criminal Justice, in its decision 5/101, entitled "Development of United Nations minimum rules for the administration of criminal justice", requested the Secretary-General to continue to solicit those Member States that had not replied to the notes of the Secretary-General regarding the advisability and specific content of the draft minimum rules for the administration of criminal justice and to evaluate those replies.

2. In the same decision, the Commission also requested the Secretary-General to seek the views of all Member States, including those that had replied to the notes mentioned in paragraph 1 above, on the basis of their review of the report of the Secretary-General (E/CN.15/1996/18) regarding (a) the utility of promulgating the draft minimum rules for the administration of criminal justice, (b) the utility of convening an expert group to review the draft minimum rules and (c) specific areas in which an expert group, should it be convened, should consider making changes to the draft minimum rules.

3. In the same decision, the Commission further requested the Secretary-General to report to it at its sixth session on the replies received from Member States and to include in the report a table summarizing the position of Member States with respect to the three issues mentioned in paragraph 2 above.

4. As at 20 February 1997, replies had been received from the following States: Argentina, Australia, Austria, Belarus, Brazil, Colombia, Cyprus, Estonia, Germany, Japan, Madagascar,* Philippines, Poland, Spain and Tunisia.* The replies are summarized in section I below.

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*Although they were received in response to an earlier request of the Secretary-General, the replies from Madagascar and Tunisia are included in the present report as they could not be reflected in the previous report on the subject (E/CN.15/1996/18).

5. Reports by the Secretary-General on the subject were also presented to the Commission at its fourth (E/CN.15/1995/7/Add.1) and fifth (E/CN.15/1996/18) sessions.

I. VIEWS OF MEMBER STATES ON THE ADVISABILITY AND SPECIFIC CONTENT OF THE DRAFT MINIMUM RULES FOR THE ADMINISTRATION OF CRIMINAL JUSTICE

6. Argentina noted that the special interest in the drafting of minimum rules for the administration of criminal justice was indicated in the replies received from Member States. It also suggested that it was useful to convene, using extrabudgetary funds, a group of experts who, on the basis of the views received from Member States, should consider making necessary changes to the draft minimum rules.

7. Australia maintained its view, expressed in previous comments, that the need for such rules should be carefully assessed. It was essential that existing conventions, declarations and rules that had a bearing on the administration of criminal justice be examined to determine whether there were significant gaps to be filled in the coverage that they provided. Such an assessment was important in providing countries with all the information necessary to reach a final view on the utility of promulgating rules for the administration of criminal justice. Australia noted that such work might be carried out by a group of experts if extrabudgetary funds could be found for that purpose.

8. Austria was of the opinion that the draft minimum rules seemed highly developed but, in their present form, not yet ready for adoption. As explained earlier, some rules seemed to be too far-reaching, while others appeared to be too limited. Consequently, it would be necessary to review the text and to adjust it. A finalization of the draft was desirable and the adoption of minimum rules would be welcome. That view was not affected by the analysis of comments by Member States, as reflected in the report of the Secretary-General on the subject (E/CN.15/1996/18). Differences in legal systems and social and cultural differences should not be obstacles to establishing unified principles for procedure in criminal matters on a global scale. Moreover, since such principles were already contained in universal instruments such as the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), articles 9 and 14, further in-depth studies were not necessary. On the contrary, an extensive review by an efficient, regionally composed working group of the Commission was necessary in order to reach compromises on formulations and on a final text that would be generally acceptable. As a first step, it might be helpful if the existing draft would be reworked by the Secretariat in cooperation with outside experts. The identification of specific areas, as suggested by the Commission in its decision 5/101, did not seem useful since it was necessary to make a systematic review of all parts of the draft, even if a number of matters were already well settled. Seeking further views of Member States would not advance work on the draft and would result in further loss of time. The title of the instrument could be changed to "United Nations Minimum Rules for Procedure in Criminal Matters", in order to reflect more accurately its content.

9. Belarus acknowledged that the draft minimum rules were fully in line with universally recognized international standards aimed at the protection of human rights in the administration of criminal justice and that, in general terms, the development and adoption of that international instrument was well advised. At the same time, it was necessary to move from the first stage of preparation of the draft, consisting in the elucidation of the views of all the Member States regarding the advisability of preparing the draft minimum rules, to the second stage, namely the review of the draft minimum rules by an expert group. In the view of Belarus, in developing the minimum rules it was necessary to proceed from the premise that the international instrument must incorporate universally recognized standards for the administration of criminal justice, including standards relating to procedural issues. Any attempt to avoid formulating very specific rules would seem to be justified on the grounds that, with a high degree of detail, the differences between the procedural systems of Member States would not permit compromises to be reached in developing the rules. Belarus also stated that the expert

group set up to review the draft rules could include academic specialists and professional experts from Belarus who were currently engaged in drafting the country's new code of criminal procedure. In addition, the text of the draft minimum rules required further refinement. In particular, greater precision was called for in the use of a number of terms that might otherwise give rise to differences of interpretation when applied within the framework of different legal systems. The expert group should also make a comparison between the content of the draft minimum rules under consideration and other existing international instruments with a universal or regional scope.

10. Brazil suggested that further study had to be carried out by those in favour of the project to identify which precepts were completely original or added something new to the existing instruments, so that the rules could be universally acceptable, despite differences between criminal justice systems. There were also other problems relating to sociocultural and historical differences between the States and their legal systems, concerning the basis of their legislation. The wording "lawful" judge was given as an example, as it did not seem appropriate to imply the notion that there could be any sort of judge but a "lawful" one, especially when criminal procedures could eventually lead to deprivation of liberty.

11. Colombia attached great importance to issuing the draft minimum rules for the administration of criminal justice since they were aimed at improving the framing of policy on crime and the treatment of offenders. Colombia also considered it extremely important, in the application of the minimum rules, to give particular attention to consideration of the cultural differences between Member States and to their different legal traditions and systems; it suggested that only rules in operation in all countries should be applied.

12. Cyprus favoured the development of United Nations minimum rules for the administration of criminal justice. Its sensitivity and interest in the subject were also reflected in the adoption of relevant national laws.

13. Estonia supported the idea of elaborating minimum rules for the administration of criminal justice and the convening of an expert group meeting that would deal with the matter.

14. Germany considered that, at the present stage, the publication of the draft would be premature and that the already submitted observations emphasized the need for setting up an expert committee to reach agreement on common standards.

15. According to Japan, the draft minimum rules contained many questionable and/or ambiguous provisions. Moreover, many Member States had still not submitted their comments on the draft minimum rules, and the Commission had not discussed their possible revision, based on comments from Member States. Promulgating the draft minimum rules under such conditions would cause more confusion than clarification and would thus be of little use. Japan could not support the idea of convening an expert group to review the draft minimum rules. Instead, the Commission at its sixth session should close the discussion on the matter. If some States raised objections to closing the discussion, the following procedure could be proposed: first, the Secretariat, without prejudging in any way the desirability of elaborating new rules, should prepare a reference chart listing United Nations standards and international conventions dealing with the areas to be covered by each provision of the draft minimum rules. Subsequently, the Commission should examine the chart, provision by provision, and decide whether there was any duplication or contradiction in the draft minimum rules and the existing standards and conventions. Based on the results of such preliminary work, the Commission should recognize specific areas not effectively addressed under the existing United Nations standards or international conventions and conclude that it would be useful to fill such gaps with the new United Nations standards.

16. Madagascar considered the draft extremely interesting, as it contained the rules that, in general, all States should endeavour to incorporate in their national legislation. The rules embodied in a relevant manner the general principles of the International Bill of Human Rights, in particular the International Covenants on Human Rights (General Assembly resolution 2200 A (XXI), annex) and the Universal Declaration of Human Rights

(General Assembly resolution 217 A (III)). The Malagasy Code of Criminal Procedure, drafted in 1962, included the rules, with a few exceptions, because of the special needs of a developing country and the fact that the country had neither sufficient judges nor adequate police or judicial authorities to cover its vast territory.

17. The Philippines - as expressed in previous comments - favoured the draft minimum rules and stated that the Department of Justice of the Philippines was developing several activities intended to improve the capabilities of prosecutors and enhance the working relations among law enforcers and trial court judges, in order to fulfil the desired goals set by the draft minimum rules.

18. Poland supported the idea of establishing minimum rules, considering them to be needed on the global scale in order to provide fuller guarantees for respecting human rights in criminal proceedings. It also supported the convening of a group of experts to re-edit the rules in accordance with the proposals submitted by States.

19. Spain considered that the publication of the draft minimum rules was of great utility, since it would represent a way to harmonize the procedural provisions of the States that were willing to accept the convention or the instrument that would be adopted by the United Nations. Furthermore, that would signify an improvement of international judicial relations, as well as of the position of accused or convicted detainees. Spain stated that the rules coincided with the Spanish criminal procedural law and with other special legal provisions containing procedural aspects of detainees or convicted persons. In addition, it considered that the establishment of an expert group would be a convenient way to discuss any doubts that could arise from the promulgation of the rules in an international context. Spain suggested that the expert group should undertake comparative studies on the different legal systems of other countries, in order to find out if changes in the draft would be necessary.

20. Tunisia reported that criminal procedure under Tunisian law was in line with the general principles set out in the draft minimum rules. The Government suggested that wording should be included that would establish the right of each individual, whether a defendant or a victim, to have free access to justice with no restriction other than that set out in law. Tunisia proposed the inclusion of a special provision guaranteeing the right of a defendant under arrest to be judged at the earliest opportunity. Tunisian rules of criminal procedure were fully in line with the provisions of the draft minimum rules on oral proceedings and appeals.

II. EVALUATION

21. In response to the latest inquiry of the Secretary-General, 13 States provided additional information on the draft minimum rules for the administration of criminal justice. As in previous years, most of the States (12 out of 13) expressed, either through constructive criticism or more explicitly, some basic agreement with the idea of drafting minimum rules for the administration of criminal justice.

22. Some States stated that it was essential to review the text and adjust its terminology, wherever necessary; further substantive refinements were also suggested.

23. Eight out of 11 of the States that replied were in favour of promulgating the draft minimum rules, and 7 out of 11 States supported the convening of an expert group to review the draft minimum rules. (These numbers do not coincide with the total number of replies received, since they refer to different questions and some States provided answers to all three questions whereas others answered only one or two.) Moreover, seven States made concrete suggestions on the specific areas in which the expert group should work. One of the States did not support the convening of an expert group; instead, it proposed closing the discussion on the matter at the sixth session of the Commission and suggested alternative procedures.

24. An assessment of the replies indicated that it would be necessary to convene a working group to reach agreement on formulations and on a final text that would be generally acceptable. Two States suggested that existing conventions, declarations and rules having a bearing on the administration of criminal justice should be examined to determine whether there were significant gaps to be filled in the coverage that they provided. One State stressed that it might be useful to identify which precepts would be universally acceptable, despite sociocultural and historical differences between States and their legal systems. Such work should be carried out by a group of experts if extrabudgetary funds could be found for that purpose.

25. The replies received are summarized in table 1.

Table 1. Views of Member States regarding decision 5/101 of the Commission on Crime Prevention and Criminal Justice

Member State[a]	*Promulgating the draft minimum rules for the administration of criminal justice*	*Convening an expert group to review the draft minimum rules*	*Specific areas in which an expert group, should it be convened, should consider making changes to the draft minimum rules*
Argentina	..	In favour	Necessary changes to the draft minimum rules should be considered on the basis of the views received from Member States.
Australia	..	In favour	The existing conventions, declarations and rules which have a bearing on the administration of criminal justice should be examined.
Austria	In favour	In favour	There should be a systematic review of all parts of the draft.
Belarus	In favour	As a second step in the preparation of the draft	The amendments made in the draft rules by Member States should be reviewed.
Brazil	In favour	..	..
Colombia	In favour	..	..
Cyprus	In favour	..	..
Estonia	In favour	In favour	The following areas should be considered: ensuring the anonymity of witness; the use of expert evaluations; problems related to confiscation; special treatment of minors; simplified procedure; and procedures for economic crimes, and the fight against organized transnational crime.
Japan	Not in favour	Not in favour	Alternative procedures should be followed.
Poland	In favour	In favour	The rules should be revised in accordance with the proposals submitted by States.
Spain	In favour	In favour	There should be comparative studies on the different legal systems with a view to possibly making changes in the draft.

[a]The replies received from Madagascar and Tunisia referred to an earlier request of the Secretary-General and not to decision 5/101 of the Commission. Consequently, they are not included in the table.

III. CONCLUDING REMARKS

26. In pursuance of Economic and Social Council resolution 1994/17, Commission resolution 4/7 and Commission decision 5/101 and after three years of inquiries, 69 replies have been received from 52 Member States and 6 have been received from other entities (the United Nations Interregional Crime and Justice Research Institute; the regional institutes for the prevention of crime and the treatment of offenders, affiliated with the United Nations; and a non-governmental organization). Several States have, over the years, provided more than one reply, giving updated information on the administration of criminal justice, as well as specific comments with respect to the draft minimum rules.

27. In the light of the overall assessment of the replies and the results of the previous inquiries (E/CN.15/1996/18), a general trend towards promulgating common minimum rules for the administration of criminal justice (or criminal proceedings) seems to have emerged.

28. Thirty-nine of 51 States seem to be either directly or indirectly in favour of the proposal to formulate such minimum rules, whereas six States, while not expressing a clear opinion, stated that their national legislation was in line or basically compatible with the draft minimum rules. Five States had reservations and one had serious doubts about the matter.

29. Of the 39 States that were in favour, 6 agreed on the need and desirability of drafting minimum rules and supported their specific content; 15 provided additional proposals and suggestions and 8 proposed various amendments; and 10 presented substantial remarks, especially with regard to the implementation of such rules, but agreed on their usefulness or expressed the view that further study and a general review of their content were necessary prerequisites to the drafting (see table 2).

Table 2. Summary of the positions of Member States regarding the draft minimum rules for the administration of criminal justice, as reflected in the replies received as at 20 February 1997

	Member States	
Position	*Number*	*Names*
In favour of the draft and its specific content	6	Argentina, Belarus, Cyprus, Estonia, Iceland and Spain
In favour of the draft; provided additional proposals and suggestions	15	Colombia, Germany, Ghana, Guatemala, Kazakstan, Mauritius, Panama, Peru, Philippines, Poland, Saudi Arabia, South Africa, Switzerland, Turkey and Uganda
In favour of the draft, but proposed amendments	8	Bahrain, Chile, France, Jordan, Malaysia, New Zealand, Oman, Qatar
Presented substantial remarks, but was still in favour of the draft	10	Austria, Australia, Brazil, Cuba, Denmark, Finland, Portugal, Republic of Korea, United Kingdom of Great Britain and Northern Ireland and United States of America
Expressed no clear opinion, but stated that national legislation was substantially in line with the content of the draft	6	Barbados, Croatia, Ecuador, Madagascar, Slovakia and Tunisia
Expressed specific reservations	5	Canada, Kuwait, Luxemburg, Namibia and Syrian Arabic Republic
Expressed doubts on the utility of the draft	1	Japan

30. One State was against the draft minimum rules and proposed closing the debate on the issue, whereas five States made substantive comments stressing problems involving compatibility with their own legislation or involving the translation of a number of legal expressions.

31. The convening of a group of experts to review the draft minimum rules, giving particular attention to aspects of legal procedure and associated problems pertaining to the different legal systems, was generally viewed as a desirable solution, especially if extrabudgetary funds could be made available for that purpose.